

REMARKS

This is a full and timely response to the above-identified Office Action. The above listing of the claims replaces all prior versions, and listings, of claims in the application. Reexamination and reconsideration in light of the proposed amendments and the following remarks are respectfully requested.

Rejection under 35 USC § 102

The rejection of claims 1-2 and 8-10 under 35 USC § 102(b) as being anticipated by Saund (USP 5,835,241) is respectfully traversed.

In this rejection, the position is taken that the perspective transforms T1 and T2 are such as to meet the claimed requirements of a first set of points and a second set of points, and goes on to assert that a first set of points is “inherently” generated representing the three-dimension profile of the book and is being fitted to an “inherent” second set of points representative of a “developable” mesh using page shape transform T2 (see page 4, lines 5-8 of this Office Action).

First, if T2 is the second set of points, how can it be used to fit itself to the first set of points?

Second, in order for inherency to be used as a basis for anticipation, it must occur in each and every instance, not only in given circumstances.

“[I]t is not sufficient that a person following the disclosure might obtain the result set forth in the [claim]; it must invariably happen.” Gubelmann v. Gang, 408 F.2d 758, 766, 161 USPQ 216, 222 (CCPA 1969).

In this situation, it is submitted, assuming for the moment that T2 is representative of a mesh, that the mesh need not be “developable” and may be “non-developable” or even “near-developable.” It is submitted that the assumption of a “developable” mesh is not warranted and that a *prima facie* case of anticipation has not been established for at least this reason.

Third, the claims call for the second set of points to represent a developable mesh. T2 is cited as inherently providing the second set of points. T2, however, is disclosed as being a perspective transform. It is submitted that a perspective transform cannot be used to anticipate a developable mesh (which the claims require the second set of points to represent).

Fourth, while the perspective transforms T1 and T2 may *arguendo* contain data pertaining to points in space, there is no disclosure of *per se* "fitting" of one set of points to another set of points.

It is respectfully submitted that Saund neither discloses nor suggests the claimed subject matter. The anticipation rejection is therefore traversed for at least these reasons.

Saund at column 4, lines 43-52, discloses that:

In addition to the platform 8 and the calibration system 14, bound document scanning system 4 includes an image acquisition system 20, a light stripe projection system 22, an electronic subsystem system 24 (ESS). Each of the elements of the scanning system 4 **are not positioned in an assigned location relative to each other**. When the scanning system 4 is positioned in a new location, the calibration system 14 is used to orient the image acquisition system 20 relative to the platform 8. (Emphasis added)

The illustrated embodiment of the invention is such as to provide the light stripe projector 4 and the camera 2 in the same housing (see Fig. 1) and therefore in a position which is both assigned and fixed with respect to the camera. New claims 12 and 13 have been added in this response. Claim 12 calls for a projector which is arranged in an assigned fixed position with respect to the imaging detector for projecting a structured light pattern that forms separate light stripes across the non-planar surface. This claim is therefore both novel and non-obvious inasmuch as Saund teaches away from such a structure.

Newly presented Claims

New claims 12 and 13 are, as noted above, presented in this response. The subject matter of these new claims is allowable over the cited reference for at least the reason advanced above. The subject matter of these new claims is supported by the original disclosure (including the drawings) and claims. See Fig. 1, claim 10 and the disclosure at page 9, lines 16-32, by way of example.

Allowable Subject Matter

The indication that claims 3-7 and 11 contain allowable subject matter is noted with appreciation. However, it is deemed premature in light of the above traverse, to rewrite any of these claims into independent form at this time.

Conclusion

The claims including those newly presented are deemed patentable over the cited reference for at least the reasons set forth above. Favorable reconsideration and allowance of this application is courteously solicited.

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